



2007 SENATE BILL 346

December 3, 2007 - Introduced by Senators JAUCH, MILLER, KREITLOW, COGGS, LEHMAN, RISSER, TAYLOR, WIRCH, CARPENTER, LASSA, ROBSON and SULLIVAN, cosponsored by Representatives A. OTT, SINICKI, SHERMAN, BERCEAU, POPE-ROBERTS, HINTZ, HIXSON, BLACK, ZEPNICK, GRONEMUS, PARISI, HEBL and POCAN. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

1 **AN ACT** *to create* 100.275 of the statutes; **relating to:** products containing
2 mercury and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill regulates the sale of products to which mercury has been added during formulation and manufacture, including fever thermometers, manometers (instruments for measuring pressure), thermostats, instruments and measuring devices, and switches and relays.

Under the bill, fever thermometers containing mercury may be sold only upon a prescription, and must contain instructions for use and disposal. The bill prohibits the sale of manometers of the type in milking machines. Under the bill, manufacturers of such manometers must notify wholesalers and retailers of the prohibition and provide instructions for disposal of remaining inventory. The Department of Agriculture, Trade and Consumer Protection (DATCP) must establish a program for collecting such manometers in use on dairy farms. The bill also prohibits the sale of certain thermostats and other instruments and switches containing mercury.

The bill authorizes a manufacturer or user of certain mercury-added products to petition for, and the secretary of DATCP to grant, an exemption from the bill's prohibitions. The secretary may grant such an exemption only if the petitioner establishes certain facts, including that technically feasible mercury-free alternatives are not available at comparable cost.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.275 of the statutes is created to read:

2 **100.275 Products containing mercury. (1) DEFINITIONS.** In this section:

3 (a) “Mercury-added product” means a product to which mercury is
4 intentionally added during formulation or manufacture, or a product containing one
5 or more components to which mercury is intentionally added during formulation or
6 manufacture.

7 (b) “Mercury relay” means a mercury-added product or device that opens or
8 closes electrical contacts to effect the operation of other devices in the same or
9 another electrical circuit. “Mercury relay” includes mercury displacement relays,
10 mercury wetted reed relays, and mercury contact relays.

11 (c) “Mercury switch” means a mercury-added product or device that opens or
12 closes an electrical circuit or gas valve. “Mercury switch” includes mercury float
13 switches actuated by rising or falling liquid levels, mercury tilt switches actuated by
14 a change in the switch position, mercury pressure switches actuated by a change in
15 pressure, mercury temperature switches actuated by a change in temperature, and
16 mercury flame sensors. “Mercury switch” does not include a mercury-added
17 thermostat.

18 **(2) RESTRICTIONS ON SALE AND USE OF MERCURY.** (a) *Fever thermometers.* No
19 person may sell or supply a mercury fever thermometer to a consumer or patient,
20 unless the thermometer has been prescribed for the consumer or patient by a
21 practitioner, as defined in s. 450.01 (17). A mercury fever thermometer

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1 manufacturer shall supply with each thermometer clear instructions on the careful
2 handling of the thermometer to avoid breakage and on proper cleanup if the
3 thermometer breaks. For purposes of this subsection, “mercury fever thermometer”
4 means a thermometer that contains mercury for the purpose of measuring body
5 temperature, but does not include a thermometer containing mercury solely within
6 a button cell battery.

7 (b) *Manometers*. No person may sell or distribute a mercury-containing
8 manometer of the type in milking machines on dairy farms. Manufacturers of such
9 mercury-containing manometers shall notify wholesalers and retailers that the sale
10 or distribution of such manometers is prohibited and shall instruct them on the
11 proper disposal of remaining inventory. The department shall promulgate rules
12 establishing a program to collect and replace mercury-containing manometers
13 already in use on dairy farms in the state.

14 (c) *Mercury-added thermostats*. No person may sell or distribute for
15 promotional purposes a mercury-added thermostat. For the purpose of this
16 subsection, “mercury-added thermostat” means a product or device that uses a
17 mercury switch to sense and control room temperature through communication with
18 heating, ventilating, or air-conditioning equipment. “Mercury-added thermostat”
19 includes thermostats used to sense and control room temperature in residential,
20 commercial, industrial, and other buildings, but does not include a thermostat used
21 to sense and control temperature as part of a manufacturing process.

22 (d) *Instruments and measuring devices*. 1. No person may sell or distribute the
23 following:

24 a. A barometer.

25 b. An esophageal dilator, bougie tube, or gastrointestinal tube.

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- 1 c. A flow meter.
- 2 d. A hydrometer.
- 3 e. A hygrometer or psychrometer.
- 4 f. A manometer other than a manometer prohibited from sale under par. (b).
- 5 g. A pyrometer.
- 6 h. A sphygmomanometer.
- 7 i. A thermometer other than a thermometer prohibited from sale under par. (a).

8 2. Subdivision 1. does not apply to the sale of a mercury-added product listed
9 in subd. 1. a. to i. if use of the product is required under federal law or if the only
10 mercury-added component in the product is a button cell battery.

11 (e) *Mercury switches and relays.* 1. No person may sell or distribute,
12 individually or as a product component, a mercury switch or mercury relay. This
13 subdivision does not apply to a switch or relay that is used to replace a switch or relay
14 that is a component in a larger product in use prior to the effective date of this
15 subdivision [revisor inserts date], if one of the following applies:

- 16 a. The larger product is used in manufacturing.
- 17 b. The switch or relay is integrated, with, and not physically separate from,
18 other components of the larger product.

19 2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay
20 if use of the switch or relay is a federal requirement.

21 **(3) EXEMPTIONS.** (a) This section does not apply to the sale of a mercury-added
22 product for which the secretary grants an exemption under this subsection.

23 (b) A manufacturer or user of a product may apply for an exemption from this
24 section by filing a written petition with the secretary. The secretary may grant an
25 exemption with or without conditions upon finding that the mercury-added product

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1 is reasonable and appropriate for a specific use. The secretary shall find that a
2 product is reasonable and appropriate for a specific use only if a petitioner
3 establishes all of the following:

4 1. A system exists for the proper collection, transportation, and processing of
5 the product at the end of its life.

6 2. One of the following applies:

7 a. Use of the product provides a net benefit to the environment, public health,
8 or public safety when compared to available nonmercury alternatives.

9 b. Technically feasible nonmercury alternatives are not available at
10 comparable cost.

11 (c) Prior to approving an exemption, the secretary may consult with
12 neighboring states to promote consistency in the regulation of mercury-added
13 products. The secretary may request a person who is granted an exemption to
14 maintain records and provide reasonable reports to the department that
15 characterize mercury use. Exemptions may not exceed 5 years and may be renewed
16 upon written application if the secretary finds that the mercury-added product
17 continues to meet the criteria specified in par. (b) and the manufacturer or other
18 persons comply with the conditions of its original approval. The department shall
19 promulgate rules for processing exemption applications that provide public
20 participation, taking into account the role of the interstate clearinghouse.

21 (4) INTERSTATE CLEARINGHOUSE. The department may participate in the
22 establishment and implementation of a regional, multistate clearinghouse to assist
23 in carrying out the requirements of this section.

24 **SECTION 2. Effective date.**

